

Attorney Docket No. 9052-268

In re: Morgan et al.

Application No.: 10/542,115

Filing Date: July 12, 2005

## **REMARKS**

Claims 1, 3–6, 8 and 10–21 are currently pending in this application. The present paper incorporates the amendments to the claims in the amendment and response mailed on May 13, 2009. Applicants respectfully request entry of the claim amendments presented herein in view of the accompanying Request for Continued Examination, and further consideration of the present application in view of these amendments and the remarks provided below.

### **Support for Claim Amendments**

The amendments presented herein have been made to recite particular aspects of the invention so as to expedite the prosecution of the present application to allowance in accordance with the USPTO Patent Business Goals (65 Fed. Reg. 54603, September 8, 2000). These amendments do not represent an acquiescence or agreement with any of the outstanding rejections.

Claim 1 is amended herein for clarity and to more particularly point out what Applicants regard as the invention, incorporating all the elements and recitations of Claim 17, Claim 17 is canceled herein in view of the amendment to Claim 1, and Claim 21 is amended herein to provide proper antecedence to that which is claimed. Support for these amendments can be found in the specification as originally filed. The points raised by the Examiner are addressed hereinbelow in the order in which they are raised in the Final Action and Advisory Action.

### **Claim Objections**

Claim 1 is objected to for various informalities. Applicants amend Claim 1 herein for clarity, as suggested by the Examiner, to more particularly point out that it is the film that has a fat content. Additionally, lines 6–10 of Claim 1 are amended herein to more clearly define the collagen content of the claimed film. As amended herein, Claim 1 defines the collagen content as consisting essentially of sow collagen, wherein the total non-porcine collagen content is less than

10% of total collagen content, and wherein the total non-sow porcine collagen content is less than 10% of total porcine collagen content in the film. In view of the foregoing, Applicants believe that they have addressed the objections of the Examiner. However, should the Examiner continue to have any further issues or concerns, Applicants respectfully solicit the Examiner for suggestions as to the resolution of this matter.

### **Claim Rejections – 35 U.S.C. § 103**

Claims 1, 3–6, 8, and 10–21 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Application Publication No. 2005/0031741 A1 (hereinafter, “Morgan et al.”) in view of U.S. Patent No. 6,482,240 (hereinafter, “Eckmayer et al.”). The reasons for maintaining this rejection are set forth by the Examiner in the Final Action, and the reasons for the non-entry of the amendments to the claims submitted in the paper of May 13, 2009 are set forth in the Advisory Action. Applicants respectfully traverse this rejection.

The Examiner maintains that Morgan et al. teach a collagen casing or film. Applicants respectfully disagree. The discussion of collagen films by Morgan et al. relate to a general description of the state of the art (paragraphs [0002] and [0003] of Morgan et al.) and not to a description of a collagen film with the characteristics of the present invention. Applicants once again reiterate that one of skill in the art in the field of the invention considers the terms “film” and “casing” have exclusive and separate meanings. The Examiner has not provided support for the broad and conclusory allegation that one of skill in the art in the field of the invention would appreciate that a film or a casing are merely different physical forms of an extruded collagen membrane. Furthermore, by the admission of the Examiner in a previous Action, the disclosures of Morgan et al. do not explicitly teach the collagen casing can be in another form besides a tube. As such, Applicants continue to submit that Morgan et al. do not disclose a porcine collagen **film** as instantly claimed.

Eckmayer et al. discuss collagen membranes (films) formed from porcine rinds (i.e., pig skins), particularly for wrapping food products (abstract). However, Eckmayer et al. are silent in regard to preparing a collagen film that has a collagen content that consists essentially of sow

collagen as instantly claimed. As one of skill in the art will appreciate, the term “sow” has a very precise meaning in the art and relates to “female pigs with milk secretion.” As described on page 3 of the present application, it has been surprisingly found that using sow collagen provides improved strength to the collagen film that would not have been predicted from the disclosures in the prior art. The characteristics of the film of the invention and its improved characteristics are clearly shown in Table 1 on page 19 of the present application. The superior characteristics of a film prepared from sow collagen could not have been predicted from the disclosures of Eckmayer et al.

It is also important to appreciate that the use of pigs in the industry mainly involves the use of young pigs. The reason for this is that young pigs make up the vast proportion of the pig population. As the young pigs are slaughtered, only a small proportion of pigs are allowed to mature to either a sow or boar. These sows and boars form the breeding population which is a very small portion of the pig population. In view of the surprising technical advantage that is embodied by the present invention, Applicants have purposefully selected and manufactured collagen film from mainly sow collagen. There is no teaching or suggestion in the prior art that one of ordinary skill in the art at the time of the invention to prepare a collagen film from sow collagen without applying hindsight in light of the present application.

Furthermore, as one of skill in the art will appreciate, due to the different characteristics of a casing as compared to a film, it is not appropriate to consider the combination of the disclosures of Eckmayer et al., directed toward a film/membrane, with the disclosures of Morgan et al., directed toward a casing. In that Morgan et al. do not disclose a collagen film and the lack of clear motivation or suggestion for one of ordinary skill in the art to combine disclosures of Eckmayer et al. with those of Morgan et al., Applicants submit that the Examiner has failed to establish a *prima facie* case of obviousness.

Nonetheless, Applicants amend Claim 1 to incorporate the recitations of Claim 17 to more particularly point out that the film of the invention must have a wet tear strength in the extrusion direction (machine direction, MD) of greater than 300 gf/mm. By the admission of the Examiner, neither Morgan et al. nor Eckmayer et al. disclose this limitation. The characteristics

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of the film as instantly claimed as shown in Table 1 of the specification clearly shows an unexpected technical effect in which the film of the invention, with a ratio of collagen to fat being at least 2.1 to 1 and prepared from collagen consisting essentially of sow collagen, provides superior characteristics compared to those of Eckmayer et al. As regards the disclosures of Morgan et al., Applicants reiterate that Morgan et al. disclose a casing, which is not comparable with the film of the present invention. Furthermore, although Morgan et al. may discuss a casing of cold wet tensile strength greater than 2.5 kg, Applicants submit again that do not disclose a film with the characteristics as instantly claimed and as previously acknowledged by the Examiner.

In view of the foregoing, Applicants submit that the instant claims are directed to nonobvious subject matter, and respectfully request that the instant rejection be withdrawn.

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## CONCLUSION

Applicants believe that the points and concerns raised by the Examiner in the Action have been addressed in full, it is respectfully submitted that this application is in condition for allowance, which action is earnestly solicited. Should the Examiner have any remaining concerns, it is respectfully requested that the Examiner contact the undersigned Attorney at (919) 854-1400 to expedite the prosecution of this application to allowance.

A Request for Continued Examination (RCE) is included with this response. Applicants hereby authorize the Commissioner to charge Deposit Account No. 50-0220 in the amount of \$810.00 as fee for the RCE for a large entity. Applicants believe this amount to be correct; however, the Commissioner is hereby authorized to charge any deficiency or credit any refund to Deposit Account No. 50-0220.

Respectfully submitted,



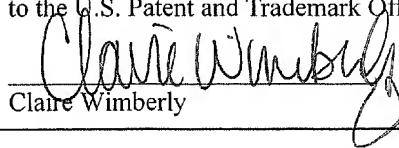
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Claire Wimberly